

Lodged Proposed Order

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

FILED

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Marshall S. Sanders and Lydia O. Sanders, Trustee(s), or any Successor Trustee(s) of the Marshall and Lydia Sanders Trust Dated April 20, 1990, appearing as Trustees, *Pro Se*

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION-SANTA ANA**

Marshall S. Sanders and Lydia O. Sanders,
Trustee(s) of the Marshall and Lydia Sanders
Trust Dated April 20, 1990,
Plaintiff,

vs.

Bank of America, N.A.; Wells Fargo Bank,
N.A., as trustee, on behalf of the Harborview
Mortgage Loan Trust Mortgage Loan Pass-
Through Certificates, Series 2007-1; National
Default Servicing Corporation; Select
Portfolio Servicing, Inc.; and Does 1-20,
Defendants.

Case No.: 8:15-cv-00935-AG-AS

NOTICE AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF EMERGENCY EX PARTE
APPLICATION AND MOTION FOR
TEMPORARY RESTRAINING ORDER TO
CANCEL AND ENJOIN A TRUSTEE'S
SALE SCHEDULED FOR SEPTEMBER 22,
2015 AT 12:00 NOON AND FOR
PRELIMINARY INJUNCTION

Date:
Time:
Courtroom:

Trustee's Sale Date: September 22, 2015
Trustee's Sale Time: 12:00 P.M.

NOTICE IS HEREBY GIVEN THAT on September 14, 2015, or as soon thereafter as the matter may be heard in a Department of the above-entitled Court located at 411 West Fourth Street, Room 1053, Santa Ana, CA 92701-4516, the Plaintiffs, Marshall S. Sanders and Lydia O. Sanders of the

1 Marshall and Lydia Sanders Trust dated April 20, 1990 (hereafter, "Plaintiffs"), move this Court to
 2 enter a Temporary Restraining Order canceling and enjoining a Trustee's Sale presently scheduled
 3 for September 22, 2015, and for a preliminary injunction precluding any foreclosure or foreclosure-
 4 related activity (jumping homeowner's fence to see if the home has been abandoned) (breaking and
 5 entering for the purpose of installing lockout devices)(poisoning pets in an attempt to frighten
 6 homeowners to move out)(coming onto property and peering into windows)(attempting to cut
 7 electricity, natural gas [in winter], and water utilities' services in an effort to cause homeowners to
 8 abandon the home) (taking photographs and video recording the premises using tall, pole-mounted
 9 devices to peek over shrubs, solid gates, and other hindrances to recording and photographing, acts
 10 designed to reveal activity(ies) of occupant(s) or premises property conditions), all of which incidents
 11 have been video-captured using homeowners' own closed-circuit video surveillance equipment
 12 (homeowner having been in the security business for more than 40 years), pending the full
 13 disposition of this action on the merits on the grounds that:

14 1. Plaintiffs have sued Bank of America, National Association (hereafter, "BA"), Wells Fargo Bank,
 15 N.A., as trustee on behalf of Harborview Mortgage Loan Trust Mortgage Loan Pass-Through
 16 Certificates, Series 2007-1 (hereafter, "WF"), National Default Servicing Corporation (hereafter,
 17 "ND"), Select Portfolio Servicing, Inc. (hereafter, "SP"), and Does 1-20 for numerous causes of
 18 action including violation of the California Homeowner's Bill of Rights and to cancel and enjoin a
 19 Trustee's Sale, foreclosure auction sale, of the Plaintiffs' primary, owner-occupied residence
 20 currently scheduled for September 22, 2015 at 12:00 P.M. by operation of law the result of a Truth-
 21 in-Lending Act rescission (see corresponding exhibits attached hereto a made a part hereof,
 22 particularly "bank's" acknowledgement [but failure to do anything about it] letter and bank's
 23 counsel's acknowledgement letter, although, disingenuously, and fraudulently, bank's current counsel
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1 states that the bank never received such notice of rescission (irrelevant under TILA and also under
2 the mailbox rule), 15 U.S.C. § 1635.

3 Exceedingly briefly, to spare the Court's precious time, there are at least six (6) major bases upon
4 which, after surviving a Motion to Dismiss and Summary Judgment, and after a full trial on the
5 merits, this Court could hold in Plaintiffs' favor, at least in so far as Defendants lack jurisprudential
6 standing to even be in Court in the first place, since, after mailing the notice of rescission (and
7 Defendant Bank of America, and Bank of America's counsel, acknowledging it)(see prior Exhibits
8 attached to First Amended Complaint [hereafter, "FAC"]), by operation of law, Bank of America had
9 no alternative under TILA but to reconvey the security instrument (here, the deed of trust), cancel the
10 Note, and return all monies paid, none of which BA did, or alternatively, BA, under TILA, had 20
11 days to file suit to vacate the rescission, but BA did not do that either. Instead, BA did nothing. Their
12 letter claiming that the rescission was time-barred, under TILA, is statutorily noncompliant and thus
13 irrelevant. They had to sue me. I didn't need to do anything further.

14 Those six (6) major bases, in order of the time effected (approximate date identified), are as follows:

15 (1) No "loan" ever consummated. America's Wholesale Lender ("AWL")(see "closing" documents
16 exhibits included in the First Amended Complaint and not included here so as not to burden the Clerk
17 of the Court with redundant and voluminous exhibits) never existed in time or space. It's hard to have
18 a "loan" with a nonexistent entity. Actually, such a "loan" is a nullity. It isn't simply voidable but just
19 plain void ab initio. Effective date: Prior to "loan" origination...approximately September
20 2006...months before the purported "closing," more aptly put, victimization. If Countrywide/Bank of
21 America wanted a "real" loan, then they should have used a real lender.

22 (2) I don't know if this is a good "order" but I'll try my best: "Standing." Defendants lack
23 jurisprudential standing for myriad reasons. One good one is that they paid/exchanged no
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1 consideration for the "loan," and if they did, let them prove it with a "real" money trail plain for
2 anyone to understand, and not with fabricated, forged, robo-signed and fraudulent documents. The fact
3 that the county recorder took in the documents and recorded them does not mean that the documents
4 are not fabricated, forged, robo-signed and fraudulent, recorded solely for the purpose of foreclosure
5 by parties without any legal interest therein but instead in order to obtain a free house at some
6 unsuspecting homeowner's expense. Effective date: prior to loan "origination."

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8 (3) Commonly known as *Wozab*, but also known as the security first rule, and also, the one-form-of-
9 action rule, Defendant Bank of America, without consent or privilege, and after a declared event of
10 default (which elsewhere is alleged to be a contrived event of default when in fact there was no
11 default for the "creditors" were continuously being paid, were whole, and were not aware of Bank of
12 America's contrived default, a unilateral act without investor knowledge or consent to obtain a free
13 house, at both the homeowner's expense and the investor's expense), Bank of America illegally and
14 unlawfully "swept" Plaintiffs' bank account clean, leaving nothing, and applied the "stolen" funds to
15 its own "account" by offsetting the amount of the contrived declared default to reduce the amount of
16 the "loan," which was no loan at all, for all of the above-stated bases already. This was a pure act of
17 theft. "If" Bank of America had foreclosed first and had not put its hands to Plaintiffs' bank account,
18 different story, then in that instance, Bank of America might have obtained a free house. But by
19 going after low-hanging fruit, Plaintiffs' bank account, and taking every last penny out, and applying
20 the money to the purported debt of the "loan" that for all of the reasons above-stated was void ab
21 initio, void by operation of law, void by virtue of the fact that the "lender" was a non-existent entity,
22 or for any other reason, Bank of America thus used up its one form of action and cannot now proceed
23 against Plaintiffs' home to not just obtain a free house, but also, free money. The sum Bank of
24 America stole is irrelevant. The fact that Bank of America picked the low road and stole its way to a
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1 remedy means they do not get a second remedy, foreclosure. Bank of America must live with the
2 remedy chosen.

3 (4) We've pretty well beaten this one to death, and every court that has looked at it seems bent to rule
4 against the Supreme Court of the United States by reading between some lines that only the court
5 then interpreting the statute fathoms, or alternatively, the mantra that *Jesinoski* is narrow and
6 therefore no other case gets to "fit," has stymied Plaintiffs to date, in bankruptcy and here. Thus,
7 permit me to say, simply, if there was not, nor could have been, "consummation," since the "lender"
8 was not real, and thus no lender was identified, inimical to the whole purpose Congress wrote and
9 passed the Truth-in-Lending Act, then logically and reasonably, there has been a deliberate
10 concealment on the part of the "lender" to hide its identity, to what would seem to be no beneficial
11 purpose to anyone unless the purpose was to hide a far wider and highly complex "theft" clothed as
12 legitimate lending, which in reality was a global Ponzi taking in trillions from investors to ultimately
13 bilk them while obtaining, to date, more coming daily, 15 million free houses. I do not contend for an
14 instant that this Court or any other court is going to change the world or change how lending is
15 practiced by the financial services industry, domestically and globally, however, I'm just one pea in a
16 giant pod (the world) and I hope that at least this Court will consider the fact that this one Plaintiff is
17 about to be ground to dust by a "machine" he could not possibly have imagined, that machine is
18 today's financial services industry, of which, Bank of America is a critical and key player, so much
19 so, that even this Plaintiff, as a homeowner, was forced to pay for its shortcomings via the taxpayer
20 bailout. So, in essence, this Plaintiff-homeowner has already "paid," and unless this Court drills down
21 deeper than perhaps it ever has before on just another foreclosure case, well, from dust I came, and
22 courtesy of Bank of America, to dust I am about to return. This basis is TILA rescission effective
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1 upon mailing. The date mailed was February 17, 2010. (Exhibit previously provided...multiple
2 times).

3 (5) Again, I do not wish to belabor this basis, for surely the Court has heard it ad nauseum, and has
4 perfectly good reasons for rejecting it. But, today, in front of The Supreme Court of California, sits a
5 case which will decide whether a borrower may challenge a late assignment of either a Note or Deed
6 of Trust into an Internal Revenue Code-sanctioned Real Estate Mortgage Investment Conduit
7 ("REMIC") for tax-avoidance purposes. The Court has previously been provided with numerous
8 exhibits of assignments, all of which "fail" to make it into the REMIC (Harborview, 2007-1) prior to
9 the cut-off date identified in the Pooling and Servicing Agreement ("PSA")(which I'm confident this
10 Court does not want another copy of, so I won't provide another, and unless and until the Court
11 orders me to provide one, or two, or three). All Plaintiffs ask the Court is to stay proceedings pending
12 the decision in *Yvanova* now pending at the California Supreme Court (which case will either accept
13 or reject *Glaski*), and one way for the Court to accomplish such a stay is to grant the Temporary
14 Restraining Order and Preliminary Injunction.
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16 (6) Finally, this last basis: The California Homeowner Bill of Rights. Once again, I'll be brief, not
17 because there are not facts and details critically important, but to respect the Court's resources at this
18 juncture and get to the point speedily upon which the Court might have a reasonable basis to rule. In
19 2008, while Countrywide was yet functioning and prior to Bank of America entering the picture,
20 Plaintiff made dozens of contacts with Countrywide seeking help in the form of a loan modification,
21 specifically, and the response was always the same: "Mr. Sanders, you are one of our best customers.
22 You have never been late. We cannot help people like you. There is only one way to become eligible
23 for a loan modification. You must be in default. The way to be in default is to stop making your
24 mortgage payment for ninety (90) days. Then you will be eligible for a loan modification." The clear
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1 message was "default." But what was not said was that "if" you follow our "suggestion," we intend to
2 foreclose and evict, and 15 million homeowners can readily testify to the true intentions of Bank of
3 America, and every other bank. Thus, besides many, many facts relevant to violations of specifically
4 the California Homeowners' Bill of Rights, certainly the outright scripted misdirection of Plaintiffs is
5 one good reason and basis for issuance of the requested temporary restraining order.
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7 2. The factual allegations of the Complaint, and the First Amended Complaint, which specifically
8 incorporated the Complaint, not specifically incorporated herein are incorporated herein by reference,
9 together with the entirety of exhibits attached to and made a part thereof, of the First Amended
10 Complaint, but are not submitted again here for the sake of not burdening the Clerk or the Court
11 unnecessarily.
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13 3. Defendants have threatened an unlawful foreclosure sale of Plaintiffs' primary, owner-occupied
14 residence.


15 4. Plaintiffs have been threatened with foreclosure of their unique property by the Defendants.

16 5. Federal Rule of Civil Procedure 65 allows this Court to issue a temporary restraining order if a
17 verified complaint shows that immediate and irreparable injury, loss or damage will result to the
18 movant before the adverse party can be heard in opposition and the movant certifies in writing any
19 efforts made to give notice and the reasons why it should not be required (lack of jurisprudential
20 standing). The Trustee's Sale of Plaintiffs' property will result in immediate and irreparable injury.
21 Wife, Lydia O. Sanders, just underwent her second surgery to remove breast cancer, and is in process
22 of undergoing radiation treatment; an adult disabled daughter also resides in the home; and husband
23 himself is disabled, thus it would be a "killer" to be forced to get out of our home; especially in light
24 of the fact that *Yvanova*, like *Glaski*, like *Jesinoski* are game changers in the foreclosure arena, and
25 potentially could unwind judicial decisions that have been wrong for many, many years, and put back
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1 many people into the homes that court decisions have deprived them of. For all of the above-stated
2 reasons and bases, the Trustee's Sale of Plaintiffs' property will result in immediate and irreparable
3 harm and injury and Plaintiffs have attempted to provide notice to the adverse parties.
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9 DATED: September 13, 2015
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13 Marshall S. Sanders, Trustee
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16 Lydia O. Sanders, Trustee
In Pro Per
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CERTIFICATE OF SERVICE

BY PERSONAL DELIVERY OR ELECTRONIC MAIL OR U.S. MAIL (PRECISE METHOD INDICATED NEXT TO JUDGE OR PARTY OR COUNSEL)

I, the undersigned, state that I am a citizen of the United States, a resident of the County of Orange, State of California, and that I am over the age of eighteen (18) years and not a party to the within cause; and that my residence address is 1621 Kensing Lane, Santa Ana, California 92705-3074.

I am readily familiar with the mailing practice in my neighborhood for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of daily affairs, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing. On August 19, 2015, I served a true copy of: **NOTICE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY EX PARTE APPLICATION AND MOTION FOR TEMPORARY RESTRAINING ORDER TO CANCEL AND ENJOIN A TRUSTEE'S SALE SCHEDULED FOR SEPTEMBER 22, 2015 AT 12:00 NOON AND FOR PRELIMINARY INJUNCTION; AND, MEMORANDUM OF POINTS AND AUTHORITIES**

upon:

Hon. Andrew J. Guilford, 411 W. Fourth St., Courtroom 10D, Santa Ana, CA 92701 (via the clerk's widow as instructed by court personnel)

**Locke Lord, 300 S. Grand Avenue, Suite 2600, Los Angeles, CA 90071-3194:
csison@lockelord.com; sdelrahim@lockelord.com; aileen.ocon@lockelord.com
Adam Frederick Summerfield, McGuire Woods LLP, 1800 Century Park East,
Suite 900, Los Angeles, CA asummerfield@mcguirewoods.com**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties with an email address.

[] By U.S. Mail – by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence, enclosed in a sealed envelope, with postage fully prepaid, addressed to all parties who do not have an email address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Santa Ana, California on September 14, 2015


Starr Sanders